

In the Matter of)
Expanding the Economic and Innovation) Docket No. 12-268
Opportunities of Spectrum)
Through Incentive Auctions)

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November 12, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth St, S.W.
Washington, DC 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through
Incentive Auctions, GN Docket No. 12-268*

Dear Ms. Dortch:

The [LPTV Spectrum Rights Coalition](#) represents FCC broadcast licensee members holding more than 580 LPTV licenses and construction permits in 31 states, and is a cross-section of the 6400+ LPTV holders, nearly evenly split between licensed LPTV digital TV stations, construction permits, and TV translator facilities. We number over a 100 private and public organizations, and collectively Coalition members air hundreds of local and national culturally diverse channels of content, reaching over 50 million viewers.

The Coalition is notifying you of an ex parte email sent to the Spectrum Auction Task Force related to the Spectrum Auction Unlicensed Spectrum LEARN session on November 8, 2013. The Coalition is providing these meeting notes due to the lack of direct audience questions being allowed in the meeting, resulting in substantial inaccuracies and omissions by the participants of the session. While there was a representative from CBS television which provided expert commentary on wireless microphones and other wireless tools television broadcasters use, this representative was not able to provide any meaningful contribution related to the effects of a

large unlicensed band on the amount of licensed television stations available for usage in the post-auction channel repacking.

The Coalition is responding to three key misstatements made in the session:

1. There will be spectrum available for a 20-30 MHz contiguous unlicensed band below channel 37
2. The FCC is authorized to create an unlicensed band this large
3. There needs to be a guard band below channel 37 in ALL markets

The Coalition appreciated to have a LEARN session with such expert participants which were able to explain in detail the technical and operational considerations of providing for unlicensed services in a new national band plan as encouraged and authorized by Congress in the Spectrum Auction Act. The exchange and commentary of the representative from the American Society for Healthcare Engineering, and his explanation of how the Wireless Medical Telemetry Service (WMTS) works, and the potential problems sharing TV channel 37 with other unlicensed users was very enlightening.

If a broadcast television representative was on the panel which was focused on the Act and not just wireless services, they would have pointed out the following:

1. Any potential problems channel 37 WMTS users have experienced with digital television broadcasters have been minimal and easy to rectify.
2. Currently there are about 170 DTV broadcasters operating on channel 36, and about 149 DTV broadcasters on channel 38.
3. While we anticipate that most all channel 38 and 36 licensees to be moved in the post-auction channel repack, there is absolutely no “technical reason” to not have DTV licensees, either primary or secondary, to be located next to channel 37, assuming the astrophysical and WMTS users maintain use in that band.

4. Even if channel 37 is to be shared with new unlicensed users, that in itself is no reason to not use channel 36 for DTV.

However, we found that the two representatives from the Public Interest Spectrum Coalition (PISC), one on each panel, and the representatives from Google, Microsoft, and the Wireless Internet Service Providers Association (WISPA), each made declarations about what the FCC could do regarding the size of a proposed unlicensed band which are not consistent with the Spectrum Auction Act. While the Coalition appreciates that they all want a 30-MHz contiguous band so that they can “monetize” the services they want to provide or see provided, this goal is simply not authorized within the Spectrum Auction Act. To quote directly from the Act:

Middle Class Tax Relief and Job Creation Act of 2012

Subtitle D—Spectrum Auction Authority

SEC. 6407. GUARD BANDS AND UNLICENSED USE.

(a) IN GENERAL.—Nothing in subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402, or in section 6403 shall be construed to prevent the Commission from using relinquished or other spectrum to implement band plans with guard bands.

(b) SIZE OF GUARD BANDS.—Such guard bands shall be no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands.

(c) UNLICENSED USE IN GUARD BANDS.—The Commission may permit the use of such guard bands for unlicensed use.

(d) DATABASE.—Unlicensed use shall rely on a database or subsequent methodology as determined by the Commission.

(e) PROTECTIONS AGAINST HARMFUL INTERFERENCE.—The Commission may not permit any use of a guard band that the Commission determines would cause harmful interference to licensed services.

What the Act clearly states, as you can see above, the size of the Guard Band is based on a “technically reasonable” basis, and is mandated by a “shall be” directive from Congress. If the FCC desires to create a 20 to 30-MHz contiguous Guard Band, on the basis of wanting to encourage unlicensed services, but not on the “technically reasonable” basis, as desired by many

of the panelists in the LEARN session, then the FCC needs to go back to Congress to have SEC.407 (b) changed.

The Coalition understands that the Spectrum Auction Task Force, and key potential Reverse Auction participants (Verizon, AT&T, T-Mobile) and others are now planning for “market variable band plans”, meaning that depending on the amount of recovered spectrum in the forward auction, and the remaining to be repacked primary broadcast licensees, that there will be differences in the potential size of local band plans. For LPTV and TV translator licensees this is not a problem, in so much as the variable plans do not go below channel 37. Once a local band plan starts to need channel 36 and below, the LPTV licensees in that market will suffer. But this is reality and how the Act was constructed. What is not authorized by Congress, as we have described above, is a 30-MHz unlicensed band which is not in between the up and down portions of the band plans (located within channels 51-38), but as an extension of the band plan (below 37) and not in between other licensed users. The potential effects on the LPTV industry are enormous:

1. There are currently about 1201 LPTV and TX licensees operating on channels 51-38, all of which will need to find new channels.
2. There are currently about 495 LPTV and TX licensees operating on channel 36-32, all of which will need to find new channels.
3. There are currently about 2000 construction permits, most of which will also need to be accommodated in the repack.

As Congress specifically addressed and authorized in the Spectrum Auction Act:

SEC. 6403. SPECIAL REQUIREMENTS FOR INCENTIVE AUCTION OF BROADCAST TV SPECTRUM.

(5) LOW-POWER TELEVISION USAGE RIGHTS.—Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.

One of these rights is if displaced by another licensed primary user, that the LPTV licensee has the right to file for a new channel assignment within that market, or may move to an adjacent market if the coverage overlaps. There is no provision in law for an LPTV licensee to be displaced and have to change frequencies for an unlicensed service.

In conclusion, Congress, in the Spectrum Auction Act, authorizes the utilization of unlicensed services which are “technically reasonable” to protect licensed services from each other. This does not mean a contiguous 30-MHz unlicensed band at the bottom end of any local band plan. Further, Congress specifically granted that LPTV licensees do not in any way lose any of the current rights they operate under, one of which is that they have the right to apply for a new frequency if they are displaced by a “licensed” service.

Respectfully submitted,

_____/S/_____
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